

STATE OF MICHIGAN
COURT OF APPEALS

In re DESMUKES/BROWN/FULTON, Minors.

UNPUBLISHED
October 22, 2015

No. 327132
Lake Circuit Court
Family Division
LC No. 14-001560-NA

Before: TALBOT, C.J., and BECKERING and GADOLA, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to her three minor children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

I. STATUTORY BASIS FOR TERMINATION

Respondent-mother argues that the trial court erred when it found that clear and convincing evidence supported terminating her parental rights under MCL 712A.19b(3)(c)(i) and (j). We review for clear error a trial court's finding that a ground for termination has been proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

Under MCL 712A.19b(3)(c)(i), a trial court may terminate parental rights if the parent "was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and" it finds by clear and convincing evidence that the "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." In this case, the conditions that led to adjudication included respondent-mother's substance abuse and her physical abuse of the children. The record provides ample support for the conclusion that respondent-mother continued to struggle with alcohol addiction at the time of the termination hearing. Respondent-mother regularly tested positive for alcohol for several months before providing regular clean results. Even after she provided several consecutive clean results, respondent-mother relapsed on four separate occasions, including one instance just a month before the termination hearing. Further, respondent-mother's psychologist and parenting counselor both testified that she continued to defend her use of corporal punishment. Disturbingly, the psychologist testified that he witnessed respondent-mother raise her hand as if

to strike one of the children during a parenting-time visit. Given this evidence, the trial court did not clearly err when it found that respondent-mother still exhibited signs of alcohol addiction and exhibited physically abusive discipline techniques, and that there was no reasonable likelihood that these issues would be rectified within a reasonable time.

A trial court may also terminate a parent's parental rights if it finds by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." MCL 712A.19b(3)(j). In this case, there was ample evidence that respondent-mother's parenting techniques continued to pose a physical and psychological danger to the children. The incident that gave rise to the petition for removal occurred when respondent-mother beat one of her children with a curtain rod.¹ Respondent-mother's parenting counselor testified that respondent-mother still defended her belief that corporal punishment was proper, even after counseling on appropriate parenting techniques. Similarly, the psychologist that evaluated respondent-mother testified that respondent-mother clearly indicated that corporal punishment was appropriate. During a parenting-time visit, he saw respondent-mother act as if she was about to hit one of the children. The psychologist diagnosed two of the children with post-traumatic stress disorder stemming from respondent-mother's physical and psychological abuse. Given this evidence, the trial court did not clearly err when it found that there was a reasonable likelihood the children would be harmed if returned to respondent-mother's care.

II. BEST-INTEREST DETERMINATION

Respondent-mother also argues that the trial court erred when it found that termination was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights" MCL 712A.19b(5). When making a best-interest determination, the court may consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). We review a trial court's decision regarding a child's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent-mother argues that the trial court placed too much emphasis on the circumstances surrounding a previous removal of her children in 2008. However, the trial court did not base its decision on the previous removal. Instead, the trial judge's determination focused on the children's psychological problems and the need for normalcy, permanency, and a stable environment for each child. The finding that the children needed permanency and stability is not clearly erroneous given the facts of this case, which indicate that respondent-mother created an unstable environment through substance abuse and by physically abusing the children. Given the evidence that respondent-mother has been unable to redress the issues that prevented

¹ The trial court took judicial notice of the fact that respondent-mother pleaded guilty to a charge of child abuse in relation to the incident.

reunification with the children, we cannot conclude that the trial court clearly erred when it found that termination was in the children's best interests.

III. REASONABLE REUNIFICATION EFFORTS

Finally, respondent-mother argues that insufficient efforts were made to reunite her with her children, and that she was denied the goal of reunification when the court determined that her progress combating alcohol addiction was inadequate. Respondent-mother failed to raise this issue at the termination hearing; therefore, it is unpreserved for appellate review. We review unpreserved issues for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

The issue of whether reasonable services were offered to a respondent ultimately relates to the issue of sufficiency of the evidence for termination of parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). When a child is removed from a parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), and (4). At the termination hearing, a caseworker testified that respondent-mother received services including drug screenings, supervised parenting time, monitoring services, transportation assistance, psychological evaluations, parent-bonding assessments, parenting education through True North, parenting classes and substance abuse counseling through Community Mental Health, Alcoholics Anonymous and Narcotics Anonymous meetings, housing assistance, utility assistance, Social Security Income, Medicaid, and food assistance. Thus, it is clear that respondent-mother received reunification services.

Respondent-mother implies that petitioner did not make sufficient efforts to reunite her with the children. However, her actual argument is that she was denied the overall goal of reunification when the supervising agency and the court decided that her progress in dealing with her alcohol addiction and improving her parenting skills was inadequate. Such an argument is unavailing. "[A] parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). It was not erroneous for the court to conclude that respondent-mother did not sufficiently benefit from the services because the evidence showed that she still struggled with alcohol addiction and practicing appropriate parenting skills. This is true notwithstanding the fact that respondent-mother made some progress in overcoming alcohol addiction during the time her children were in protective custody. Therefore, respondent-mother has not demonstrated plain error.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael F. Gadola